UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

Billy Betts, Civil Action No.: 3:16-cv-1226

Plaintiff,

v.

Conn Appliances, Inc., COMPLAINT

Defendant.

:

For this Complaint, Plaintiff, Billy Betts, by undersigned counsel, states as follows:

JURISDICTION

- 1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act 47 U.S.C. § 227, et seq. (the "TCPA").
- 2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

- 3. Plaintiff, Billy Betts ("Plaintiff"), is an adult individual residing in Dallas, Texas, and is a "person" as defined by 47 U.S.C. § 153(39).
- 4. Defendant Conn Appliances, Inc. ("Conn"), is a Texas business entity with an address of 4055 Technology Forest Boulevard, Suite 210, The Woodlands, Texas 77381-2008, and is a "person" as defined by 47 U.S.C. § 153(39).

FACTS

- 5. Within the last year, Conn began placing calls Plaintiff's cellular telephone, number 214-xxx-8355, using an automatic telephone dialing system ("ATDS" or "predictive dialer").
- 6. When Plaintiff answered calls from Conn, he heard silence and had to wait on the before he was connected to the next available Conn representative.
- 7. During a conversation with a live representative in or around April 2015, Plaintiff demanded that all calls to him cease.
- 8. Nevertheless, Conn continued to place automated calls to Plaintiff's cellular telephone number.

COUNT I VIOLATIONS OF THE TCPA – 47 U.S.C. § 227, et. seq.

- 9. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
- 10. At all times mentioned herein, Defendant called Plaintiff's cellular telephone number using an ATDS or predictive dialer.
- 11. In expanding on the prohibitions of the TCPA, the Federal Communications

 Commission ("FCC") defines a predictive dialer as "a dialing system that automatically dials

 consumers' telephone numbers in a manner that "predicts" the time when a consumer will

 answer the phone and a [representative] will be available to take the call..."2003 TCPA Order,

 18 FCC 36 Rcd 14022. The FCC explains that if a representative in not "free to take a call that

 has been placed by a predictive dialer, the consumer answers the phone only to hear 'dead air' or

 a dial tone, causing frustration." *Id.* In addition, the TCPA places prohibitions on companies that

 "abandon" calls by setting "the predictive dialers to ring for a very short period of time before

disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned." *Id*.

- 12. Defendant's telephone system(s) have some earmarks of a predictive dialer.
- 13. When Plaintiff answered calls from Defendant, he heard silence before Defendant's telephone system would connect him to the next available representative.
- 14. Defendant's predictive dialers have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.
- 15. Defendant placed automated telephone calls to Plaintiff's cellular phone despite knowing that it lacked consent to do so. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).
- 16. The telephone number called by Defendant was assigned to a cellular telephone service pursuant to 47 U.S.C. § 227(b)(1).
- 17. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).
- 18. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).
- 19. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant:

- A. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
- B. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
- C. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: May 5, 2016

Respectfully submitted,

By <u>/s/ Jenny DeFrancisco</u>

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